

77-19-204. Order for hearing -- Examinations of inmate -- Scope of examination and report.

(1) When a court has good reason to believe an inmate sentenced to death is incompetent to be executed, it shall stay the execution and shall order the Department of Human Services to examine the inmate and report to the court concerning the inmate's mental condition.

(2) (a) The inmate subject to examination under Subsection (1) shall be examined by at least two mental health experts who are not involved in the inmate's current treatment.

(b) The Department of Corrections shall provide information and materials to the examiners relevant to a determination of the inmate's competency to be executed.

(3) The inmate shall make himself available and fully cooperate in the examination by the Department of Human Services and any other independent examiners for the defense or the state.

(4) The examiners shall in the conduct of their examinations and in their reports to the court consider and address, in addition to any other factors determined to be relevant by the examiners:

(a) the inmate's awareness of the fact of the inmate's impending execution;

(b) the inmate's understanding that the inmate is to be executed for the crime of murder;

(c) the nature of the inmate's mental disorder, if any, and its relationship to the factors relevant to the inmate's competency; and

(d) whether psychoactive medication is necessary to maintain or restore the inmate's competency.

(5) The examiners who are examining the inmate shall each provide an initial report to the court and the attorneys for the state and the inmate within 60 days of the receipt of the court's order. The report shall inform the court of the examiner's opinion concerning the competency of the inmate to be executed, or, in the alternative, the examiner may inform the court in writing that additional time is needed to complete the report. If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel. The examiner shall provide the report within 90 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(6) (a) All interviews with the inmate conducted by the examiners shall be videotaped, unless otherwise ordered by the court for good cause shown. The Department of Corrections shall provide the videotaping equipment and facilitate the videotaping of the interviews.

(b) Immediately following the videotaping, the videotape shall be provided to the attorney for the state, who shall deliver it as soon as practicable to the judge in whose court the competency determination is pending.

(c) The court shall grant counsel for the state and for the inmate, and examiners who are examining the inmate under this part access to view the videotape at the court building where the court is located that is conducting the competency determination under this part.

(7) Any written report submitted by an examiner shall:

- (a) identify the specific matters referred for evaluation;
- (b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;
- (c) state the examiner's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion; and
- (d) identify the sources of information used by the examiner and present the basis for the examiner's clinical findings and opinions.

(8) (a) When the reports are received, the court shall set a date for a competency hearing, which shall be held within not less than five and not more than 15 days, unless the court extends the time for good cause.

(b) Any examiner directed by the Department of Human Services to conduct the examination may be subpoenaed to provide testimony at the hearing. If the examiners are in conflict as to the competency of the inmate, all of them should be called to testify at the hearing if they are reasonably available.

(c) The court may call any examiner to testify at the hearing who is not called by the parties. An examiner called by the court may be cross-examined by counsel for the parties.

(9) (a) An inmate shall be presumed competent to be executed unless the court, by a preponderance of the evidence, finds the inmate incompetent to be executed. The burden of proof is upon the proponent of incompetency at the hearing.

(b) An adjudication of incompetency to be executed does not operate as an adjudication of the inmate's incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.

(10) (a) If the court finds the inmate incompetent to be executed, its order shall contain findings addressing each of the factors in Subsections (4)(a) through (d).

(b) The order finding the inmate incompetent to be executed shall be delivered to the Department of Human Services, and shall be accompanied by:

(i) copies of the reports of the examiners filed with the court pursuant to the order of examination, if not provided previously;

(ii) copies of any of the psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the inmate; and

(iii) any other documents made available to the court by either the defense or the state, pertaining to the inmate's current or past mental condition.

(c) A copy of the order finding the inmate incompetent to be executed shall be delivered to the Department of Corrections.

Enacted by Chapter 137, 2004 General Session